



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0413; FRL-9909-10-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;  
Infrastructure Requirements for the 2008 Lead  
National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of the NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The Commonwealth of Pennsylvania has made a submittal addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

**DATES:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0413. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P. O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by e-mail at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of SIP Revision**

On July 16, 2013 (78 FR 42482), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania proposing approval of Pennsylvania's September 24, 2012 SIP submittal to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). The NPR does not include section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1), and will be addressed in a separate process. EPA is taking separate action on the portion of 110(a)(2)(E)(ii) as it relates to CAA section 128 (State Boards).

The rationale supporting EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2013-0413. On August 20, 2013, EPA received public comments on its July 16, 2013 NPR from the Berks County Commissioners (referred to herein as the commenter). A summary of the comments submitted and EPA's responses are provided in section II of this action.

## **II. Summary of Public Comments and EPA Responses**

**Comment:** The commenter has raised several concerns related to lead monitoring and permitting in Berks County, Pennsylvania near the Exide Technologies secondary lead smelter facility (Exide). The commenter does not believe that EPA should approve the lead infrastructure SIP submitted by the Commonwealth for the 2008 lead NAAQS for several reasons, most of which are related to the commenter's concerns about the adequacy of the lead monitoring network and relate to the commenter's interpretation of the requirements of section 110(a)(2)(B) of the CAA.

First, the commenter contends that the existing network being used by the Commonwealth is not adequate and does not meet applicable EPA guidance (EPA-454/R-92-009) and 40 CFR part 58 Appendix D. Specifically, the commenter contends that the two monitoring stations (Laureldale South and Laureldale North) being used by the Commonwealth to assess lead NAAQS compliance in the area are not located at points of maximum ambient concentration and asserts

the Pennsylvania monitors must be located at the point of maximum concentration.

Additionally, the commenter states other lead monitors in the area show higher concentrations of lead. The commenter states that the Pennsylvania Department of Environmental Protection (PADEP) refused to consider voluminous monitoring station data demonstrating more significant nonattainment than at the PADEP monitors. The commenter believes these monitors, known as the St. Mike's monitors, operated and collected data until at least April 2013.

**Response:** EPA disagrees with the commenter regarding the adequacy of Pennsylvania's lead monitoring network. The Laureldale South lead monitor (AQS ID 42-011-0717) was established January 1, 1976 and has been in continual operation since that date. The monitor has been effective in identifying violations of the Pb NAAQS as recently as January 2013.

Additionally, collocated monitors were established at Laureldale North (AQS ID 42-011-0020) on January 1, 2010 to comply with the November 2008 lead NAAQS.<sup>1</sup> The monitors at Laureldale North have also been effective in identifying violations of the lead NAAQS as recently as December 2012.

Section 4.5(a) of Appendix D to 40 CFR part 58 provides for siting of monitors where lead

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<sup>1</sup> The EPA issued a final rule on November 12, 2008 that revised the NAAQS for lead and associated ambient air lead monitoring requirements (73 FR 66964, codified at 40 CFR part 58). As part of the lead monitoring requirements, monitoring agencies are required to monitor ambient air near lead sources which are expected to or have been shown to have a potential to contribute to a 3-month average lead concentration in ambient air in excess of the level of the NAAQS. At a minimum, 40 CFR part 58 Appendix D requires monitoring agencies to monitor near non-airport lead sources that emit 0.50 ton per year (tpy) or more into the ambient air. Pennsylvania's monitors at Laureldale South and Laureldale North monitor near a lead source (Exide) that emits or has emitted over 0.50 tpy or more of lead, and the monitors meet the EPA's monitor requirements from the 2008 rule and 40 CFR part 58 Appendix D.

concentrations from all sources are expected to be at the maximum taking into account logistics and the potential for population exposure. PADEP has effectively deployed monitors in locations that are both within the bounds of the 2008 rule and 40 CFR part 58 Appendix D considering important factors such as logistics, while still identifying local NAAQS violations.

Prior to deploying the Laureldale North monitors, PADEP submitted a modeling study and conducted site visits with EPA. PADEP evaluated the location of the St. Mike's monitors during this period but concluded that the existing electrical power infrastructure at the St. Mike's monitoring site was insufficient to support and maintain appropriate state-run monitors in addition to the existing St. Mike's monitors operated and maintained by Exide at the St. Mike's monitor locations. During PADEP's study, PADEP concluded it would need additional infrastructure including a new transformer and additional power poles to add monitors at the St. Mike's location, which was a logistical impediment to locating any monitor at these locations given the additional financial costs of using these sites.

PADEP selected the Laureldale North site because it was logistically feasible; analysis indicated it would monitor levels above the NAAQS; and it met siting requirements of CFR part 58 appendix D. Subsequently, the Laureldale North site was properly sited and has recorded monitored violations of the 2008 lead NAAQS with appropriately quality assured and quality controlled data in accordance with 40 CFR part 58. Since this location along with Laureldale South has recorded violations of the NAAQS, these sites may need to be maintained for decades after the area reaches attainment.

The current location of the monitors (Laureldale North and South) was approved by EPA based on the modeling study in conjunction with 40 CFR part 58 Appendix D paragraph 4.5(a), which provides in part that many factors like logistics are considered when deploying any ambient air monitor other than simply the modeled maximum concentration. Such factors include, but are not limited to, access, leasing agreements, accessibility to electricity, costs and worker safety. PADEP's conclusions regarding appropriate monitors for the 2008 lead NAAQS was reasonable based on the factors PADEP considered, including logistics. EPA believes Pennsylvania has valid concerns regarding logistics and resources with adding additional monitors (or relocating monitors) in this area (including at the St. Mike's locations). EPA has approved Pennsylvania's 2013 annual ambient air monitoring network plan and earlier plans because they met the requirements of 40 CFR part 58.

It appears from material submitted by the commenter that the commenter has at times in the past indicated to PADEP that it would help "defray" some costs if PADEP were to place a monitor at the St. Mike's sites.<sup>2</sup> However, the current monitoring network meets the applicable requirements and establishing an additional monitor would lead to PADEP incurring significant costs for lab work, personnel, and maintenance associated with Pennsylvania operating an additional monitor. While the commenter states that it offered to "help offset" some of the

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<sup>2</sup> EPA believes these nonapproved monitors which were referred to by the commenter as the St. Mike's monitors were owned and operated by Exide until at least January 2012 at which point EPA believes Exide ceased operating the monitors because the facility also ceased operation. While the commenter asserts the St. Mike's monitors were operated through at least April 2013, and EPA believes the monitors ceased operations sooner, EPA does not believe the date the St. Mike's monitors stopped operating and collecting data is relevant to the issue here which is the adequacy of Pennsylvania's monitoring network for the 2008 lead NAAQS.

operational costs of Pennsylvania maintaining and operating an appropriate monitor at the St. Mike's location in addition to the Laureldale North and South monitors, the commenter has not established any factual evidence or assurances to contradict Pennsylvania's concerns about maintaining such a monitoring site over many years if needed. Since the current network meets the applicable requirements, EPA believes Pennsylvania's logistical and financial concerns still support its Laureldale North and South monitors as adequate for the 2008 lead NAAQS, as they are appropriate devices and methods to monitor, compile and analyze data on ambient air quality as required by section 110(a)(2)(B) of the CAA.

EPA concludes that Pennsylvania meets the requirements of section 110(a)(2)(B) of the CAA for monitoring for the 2008 lead NAAQS, as discussed in EPA's Lead Infrastructure Guidance and as described in detail in EPA's technical support document accompanying the NPR. EPA's analysis will not be restated here. The TSD is available in the docket for this action at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2013-0413. While the St. Mike's monitors which are not included in Pennsylvania's approved monitoring network may show divergent ambient lead concentration data from the Laureldale North and South monitors, EPA does not view that data as dispositive regarding the adequacy of Pennsylvania's monitoring network for the 2008 lead NAAQS, particularly in light of the logistical issues discussed above. Pennsylvania's network meets all applicable requirements in the 2008 rule, 40 CFR part 58 Appendix D and in applicable EPA guidance (EPA-454/R-92-009). EPA notes that data from monitors which do not meet federal monitoring requirements, such as the Federal quality assurance and quality control requirements in Appendices A, C, and E to 40 CFR part 58, have limited use and cannot be compared to the NAAQS for regulatory purposes by EPA.

EPA also notes that because Laureldale North and South have shown recent violations of the 2008 lead NAAQS with appropriately quality assured, quality controlled data from a monitor system audited by an independent auditor for performance, any monitor data from nonapproved monitors which may show potentially higher lead concentrations would likely not alter the nonattainment status or requirements of the area near the Exide facility. EPA also notes that the area is required to attain the NAAQS as expeditiously as practicable, but no later than December 31, 2015, and the area would generally need both a modeling analysis and monitored data to demonstrate it was attaining the NAAQS.

**Comment:** The commenter also asserts that the Laureldale North monitor was not placed in an appropriate location because the analysis used for siting its location did not assess fugitive lead emissions from the Exide facility. The commenter states that the PADEP has taken no apparent action with respect to the issues regarding the Title V permit for Exide which has allegedly been remanded to PADEP for further consideration of fugitive lead emissions and that PADEP's failure to make final determinations regarding accurate identification and quantification of fugitive emissions from the Exide facility exacerbates the inaccuracy of the SIP monitoring station conclusions made by PADEP.

**Response:** EPA disagrees with the commenter regarding the alleged inadequacy of Pennsylvania's lead monitoring network due to failure to assess fugitive lead emissions when siting the monitors. EPA is aware that PADEP did not use fugitive emission sources in their 2009 modeling study of Exide prior to deployment of the Laureldale North monitors. However,

fugitive emissions are extremely difficult to quantify, there is no standard way to do so, and inclusion in the modeling would have added to uncertainty already inherent in the model. Additionally, ground-level fugitive emissions do not travel far from the source and stay inside or very near the property fenceline. Therefore, EPA does not consider the lack of fugitive emissions from Pennsylvania's modeling as dispositive to EPA's conclusion that Pennsylvania's lead monitors are adequate for the 2008 lead NAAQS as required by the 2008 rule and 40 CFR part 58 Appendix D and adequate to meet the requirements of section 110(a)(2)(B) of the CAA.<sup>3</sup>

**Comment:** The commenter alleges that EPA should not approve the Pennsylvania infrastructure submittal for the 2008 lead NAAQS because the lead monitoring network does not ensure that any future lead NAAQS attainment determinations are accurate and “will result in inaccurate NAAQS compliance conclusions.” The commenter states PADEP's refusal to consider data from other monitors will allow unacceptable risk and/or actual harm to residents in the nonattainment area.

**Response:** As noted earlier in this rulemaking action, EPA has concluded that the existing monitors satisfy the requirements of part 58. Furthermore, the existing monitors have identified nonattainment at this site and as a result, the area is required to develop a plan to attain the NAAQS as expeditiously as practicable, but no later than December 31, 2015. Before the area is redesignated to attainment, the area would generally need both a modeling analysis and monitored data to demonstrate it was attaining the NAAQS. To the extent the commenter believes that the attainment demonstration and associated modeling is inadequate to assure

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<sup>3</sup> To the extent the commenter is objecting to the lack of action on the facility's remanded Title V permit, those issues are outside the scope of this proceeding and should be pursued by the commenter within the Title V administrative process for permits.

compliance with the NAAQS in the entire nonattainment area, EPA believes the commenter should raise those concerns with Pennsylvania, and EPA, at the time for public comment on those documents.<sup>4</sup> The NAAQS are established to provide protection for public health (including the health of sensitive populations such as children) with an adequate margin of safety. Thus, EPA believes that attainment of the NAAQS throughout the nonattainment area will prevent harm to local residents from lead emitted to the ambient air.<sup>5</sup>

### **III. Final Action**

EPA is approving, as a revision to the Pennsylvania SIP, Pennsylvania's September 24, 2012 submittal which provides the basic program elements specified in sections 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i),(E)(iii), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2008 Pb NAAQS. This rulemaking action does not include approval of Pennsylvania's submittal for section 110(a)(2)(E)(ii) which pertains to CAA section 128 and which EPA will address in a separate action.

### **IV. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

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<sup>4</sup> As noted above, however, EPA gives, at most, limited weight to monitoring data that does not meet the regulatory requirements for comparison to the NAAQS, such as those set forth in Appendices A, C, and E of part 58.

<sup>5</sup> If EPA revises the lead NAAQS in the future, a separate infrastructure submittal that addresses the requirements of Section 110(a)(2)(B) of the CAA will be developed by Pennsylvania for EPA's review and approval.

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Pennsylvania's section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR part 52**

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: March 21, 2014

W. C. Early, Acting  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart NN-- Pennsylvania**

2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS at the end of the table to read as follows:

#### **§ 52.2020 Identification of plan.**

\* \* \* \*

(e) \* \* \*

(1) \* \* \*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * * *				
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS	Statewide	5/24/12	[Insert Federal Register publication date] [Insert Federal Register page number where the document begins and date]	This rulemaking action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E)(i),(E)(iii) (F), (G), (H), (J), (K), (L), and (M).

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